

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:14-CR-00135-RJC-DCK

USA

v.

DANIEL GUTIERREZ-RICO

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ORDER

**THIS MATTER** is before the Court on the defendant's motion for a second continuance of the trial of this case, currently scheduled during the December 1, 2014 criminal trial term. (Doc. No. 80).

On July 15, 2014, a grand jury indicted the defendant and four others for conspiring over a six month period to possess with intent to distribute at least 1 kilogram of heroin (Count One) and two charges of possession with intent to distribute heroin on a single date with one co-defendant (Counts Two and Three).<sup>1</sup> (Doc. No. 3). The defendant made his first appearance on August 13, 2014, and current counsel entered an appearance on August 18, 2014. (Doc. No. 43: Notice). A scheduling Order entered that day obligated the government to provide required discovery within ten days. (Discovery Order, Aug. 18, 2014). Counsel moved to continue the case from the October 2014 calendar call, and the Court re-set the trial for the December 2014 term. (Doc. No. 57: Order).

In the instant motion, counsel alleges that he is "still in the process of obtaining discovery" and evaluating the evidence in light of guilty pleas by all the co-defendants. (Doc. No. 80: Motion at 2). It is unclear from the motion whether the materials not yet provided are required to be produced prior to trial according to Fed. R. Crim. P. 16 and the Court's Discovery

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<sup>1</sup> The indictment was superseded on September 17, 2014, to increase the potential penalty faced by a co-defendant, but included no changes to the defendant's charges. (Doc. No. 49).

Order, or whether they are materials counsel would prefer to have prior to trial, such as prior statements of witnesses subject to 18 U.S.C. § 3500. It would be troubling to the Court if information required to be disclosed has not been provided during three months since arraignment. However, if all required material has been timely provided, the resolution of all co-defendants' charges indicates that counsel for the defendant has had sufficient time to prepare for trial with the exercise of due diligence.

**IT IS, THEREFORE, ORDERED** that on or before November 24, 2014, the government shall file a response to the defendant's motion, including the allegation that he has not received all discovery. The government shall specifically address whether all information required to be disclosed has been provided to the defendant, and, if not, why not and the expected schedule for its provision. If an evidentiary hearing is necessary to resolve the motion to continue, the parties will be notified by separate order.

Signed: November 20, 2014

A handwritten signature in cursive script, reading "Robert J. Conrad, Jr.", written over a horizontal line.

Robert J. Conrad, Jr.  
United States District Judge

